

arms crossed
hands in fist
hands blocking mouth
hands clasped in your lap
sitting at an angle away from the questioner
ankles crossed
legs crossed
fidgeting

Try to stay relaxed and calm so the focus is not on you, but what you say.

I hope that you have gained a better understanding of testifying. It can be beneficial, but there are traps. In writing this, I am not promoting the courts as the saviour of ourselves or our causes. They are still the apparatus of the imperialist colonizer state and therefore, should be dealt with as such. This is the bottom line:

We must be knowledgeable in every aspect we can of the enemy and must utilize every tool available. There will be more arrests and more legal battles. It is in our best interest to know the ins and outs of the system and the rules of how to play their game.

Until we are free from the state, writings like these are a necessity.

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TRICKS TO TESTIFYING

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Many activists will be charged with a crime, have to attend court proceedings to litigate on issues, or are called to testify as a witness to police brutality, etc. It is important that we know how to say something, when to say it and what to say, if called to testify. For these purposes, I have researched the material available to me and compiled this pamphlet to aid the movement in this much overlooked aspect of our defense and security - especially in the courtroom.

I have broken much of what I've studied into 3 parts:

1. Answering Questions
2. Maximizing the Impact of Your Testimony
3. The Communication Aspect of Testifying

I hope that this information will be put to good use and helps in defending against charges or leading an offensive through litigation. It is useful for those held hostage in the prison system and those trying to free the captives. It is good for courtroom testimony and depositions (which will be explained later.) In either case - criminal or civil proceedings, good luck and keep fighting.

I ANSWERING QUESTIONS

Well, here you are. You're sitting in the courthouse about to take the stand. Your heart is pumping, your palms are sweaty and you have no idea what is about to happen. This is normal. Most people feel this way when talking in front of people, especially in a position where questions are being asked of you.

The good thing is it can be controlled and you can learn how to be just as smart in not revealing too much in your answers as politicians, lawyers, expert witnesses and the like. Here's how:

There are five answers that will answer almost any

1. Dress - There is a bit of psychology in the way we dress and in which our attire is perceived. For instance, a man dressed in a business suit will appear more knowledgeable, genuine or credible than one wearing a Sex Pistol's shirt, leather pants, jack boots and chains. Dark clothes are associated with higher status, authority etc. They give the more serious look. This is one reason why the Feds and investigators dress as they do. 15

The most powerful attire for a man is a 3 piece dark suit, white shirt and dark tie. (You know, the "Men in Black" look.) For the ladies, it is a 3 piece suit, with a white blouse, with either pants or blouse set. In general, the more noticeable one's dress, hair and jewelry, the greater the distraction.

2. Body Language - Communication through body language is culturally learned and usually controlled subconsciously. As mentioned previously, much of what is communicated is done so verbally effective communicators can synchronize body language and verbal communications.

Eye contact, facial expressions and gestures make up most of what is considered your body language. Good eye contact is essential to effective testimony. We use gestures to emphasize a part as well as convey a psychological mood. Gesturing is one of the most effective communication tools, used to transfer an internal feeling to another person. We use our posture to communicate self-confidence and assertiveness.

3. Demeanor - Your goal as a witness should be to have an image that is honest and credible. To achieve this goal, you must be sensitive to the materials discussed and to the anxiety and stress that you may feel when called to testify. If you let stress or anxiety make you feel uncomfortable, it will show itself primarily in your demeanor. Be conscious of the following when you feel stressed, as all are typically associated with nervousness:

wiggling or placing your hands in front of or touching your face.

Stay in tune with your posture. Sit comfortably and as erect as possible without being rigid. If your testimony lasts a long time and you begin to get tired, there is nothing wrong with requesting a short break or recess in the proceedings.

The Verbal

The verbal has the least percentage of what effective communication consists of, at only 7%. The receivers of your message will develop their impressions of your testimony based on all 3 factors and both consciously and unconsciously develop an opinion of you and what you say.

Although the verbal percentage at first glance might seem low, it must be understood that the receiver will be processing the main points or the key issues in your communication in terms of the verbal factor. This means that the 7% is the most important aspect of your testimony. The result is that great pains should be taken to communicate your main points in as clear and concise a manner as possible.

To maximize your effectiveness, you should come across as knowledgeable, pleasant and as having a genuine desire to communicate your knowledge of the facts involved in the case. When asked to give your opinion, do so in a confident and self-assured manner. You can accomplish the goal of communicating your message by being prepared and sensitizing yourself to these three factors in effective communication.

A final note on the visual factor of communication concerning the control of that perceived:

Because the visual factor is so important in the way the dominant society perceives and believes people, a special focus is needed on 3 areas of visual communication:

question asked. They are:

1. I don't know
2. I don't understand the question
3. I don't remember
4. Yes
5. No

An explanation of each will give you some understanding of how to use the right answer to the right question.

1. I Don't Know

People are often reluctant to make the direct statement that they don't know an answer, especially when called as a witness. After all, the whole premise of testifying implies that the witness has the information that the other people need. There is a feeling that if they don't know something that is asked, they are letting someone down. This is simply not true.

The attorney questioning you will ask a lot of questions without any real basis for believing that you will have the answer; he or she is merely exploring the scope of your knowledge in the areas related to the case. If you try to answer questions in areas where you do not actually have the information, based upon what you think must have been true or must have occurred or is likely to have occurred, you prolong your testimony. The attorney will feel compelled to explore the basis of your "knowledge" in that area.

Suppose for example, you are asked whether a person (such as a close friend) receiving a communique from a collective, read that communique. You didn't see her read it, but you know that she is conscientious and tries to read the reports, and the report is related to the case in which she was involved. Therefore, you assume that she read it. Without giving the answer much thought, the typical witness will say,

"I assume that she read it." A correct and more appropriate answer would be, "I don't know." If the attorney asking the question wants to know, with some certainty whether she did, he can ask her or he can ask you if you are familiar with her normal procedures for dealing with communiques and work from your answer. But your speculation or surmise is not called for by his initial, direct question, so your answer should be, "I don't know."

2. I Don't Understand the Question

If the question contains words whose meaning depends upon context or interpretation, an answer that disregards that ambiguity may be misleading and cause difficulty when a deposition is later used or you may be impeached with this testimony. Whenever you are uncertain of the meaning that the questioner intends, you should tell him/her exactly that, by stating that you don't understand the question.

Often, the questioner will come back with "What is there about the question you don't understand?" In that case, tell her which word gives you a problem: "I am not certain what you mean in your question concerning 'terrorist activity.'"

Some prosecutors "and defense attorneys" carry this interplay too far, by insisting upon definitions - even to well-understood terms; generally, that is counter-productive and leads only to delay. As a witness, do not be enticed to play those kinds of games. Ask for clarification, by stating that you don't understand the question, only when you are legitimately concerned that your answer might otherwise be misleading or taken out of context.

3. I Don't Remember

When you are asked for information about past events, the choices are two: you remember and answer; or you don't remember and say you don't. Unfortunately, many people feel that "not remembering"

individual sounds you speak. Listen to yourself on tape. If you hear muffled speech, a slow drawl, words like "gonna" or "Worshington," try to become more aware of how crisply and accurately you are enunciating each word. This can be done by asking others to point out any undesired speech pattern.

Hearing yourself as others hear you can make your strengths and weaknesses in verbal communication very apparent. You can, with practice, significantly improve your communication skills, credibility and believability as others perceive you. Try taping yourself in regular conversations, so you can hear for yourself how others hear you.

The Visual

The greatest impact on your communication is made non-verbally (55%.) Non-verbal communication includes:

- Eye Contact
- Facial Expressions
- Gestures
- Posture

You can never say a word and people will still interpret messages from how you look and act.

While your whole body expresses your emotions, especially your face, the eyes are the most revealing. For credibility, eye contact is critical. It enhances the listener's comprehension and the speaker's credibility as well as the perception of how his message is being received.

Be sure to establish eye contact with any person to whom you are communicating your message to. You should establish, in a natural manner, eye contact with the questioner &/or judge.

Once people have registered their impressions about your eye contact and facial expressions, they move onto observing your gestures. You should be aware of where your hands are and what you are doing. You can easily communicate nervous tension by tapping,

Visual - What the receiver of your message sees. You eye contact, body language and gestures.

According to the author of Trial Communication Skills, the visual is the most important factor in testifying, making up 55% of your credibility, followed by the vocal at 38% and trailed by the verbal at only 7%. As the old saying goes: "It's not what you are going to say (the verbal) but also, how we are going to say it (the vocal and visual.) The vocal and visual are the real factors in communication. As I did with the first part of this material, I will break down the 3 factors of communication and how the listener receives the message.

The Vocal

Your voice, its tempo, speed, loudness, pitch, tone, inflections and articulations may transmit up to 38% of the meaning of your message. Your voice quality makes you distinct from everyone else. Try to avoid such features as these, which may produce a negative impression:

Nasality - Talking through your nose.

Breathiness - Creates an impression of conspiracy or bewilderment. Project your voice.

Thinness - Gives the impression that you lack depth or are "childish."

Stridency - Shrillness broadcasts nervousness and tension. Try to relax.

Harshness - Anger or irritability can cause a hard, low quality which can give people the impression you are unsympathetic, sarcastic or overbearing.

Articulation refers to the distinctness of the

is a sign of weakness, so they try to reconstruct those "memories" from what they think they should have known, from what other people have told them, or from what I previously discussed - from what they surmised probably occurred. All of these approaches are dangerous, because they claim memory where it does not exist, setting you up to give contradictory or confused answers later on, when you can no longer "remember" what you claim you could remember earlier.

When you can't remember something, state "I don't remember." Resist the temptation to make suggestions to what might refresh your memory. "If I could look through some notes from that time period, that might help.") Do not attempt to look through records in court. Any record that you take to court to refresh your memory or to simply be on hand while you are testifying is subject to be reviewed by any of the attorneys and their clients, who are parties in the case. Again, if you attempt to look in a record while answering a question, that record must be produced so that the other attorney asking the question can see what you are using to testify. I recommend that you prepare notes regarding the testimony you expect to give. These notes should include dates, times, etc., but should be very general.

Do not engage in an oral walk down memory lane. ("Well, let's see. That's back when I was helping in the Free Leonard Peltier campaign and the spokesperson then would have been Jane. She did most of that work, so to the best of my recollection, it would have been in October or November.") If the examiner wants to try to refresh your memory by recounting, through you, where you were, what you were doing at a particular time or place, fine - let him ask the questions. Do not volunteer to do his job for him. The attorney must be made to do his job. Do not become the opposing attorney's best witness.

4 & 5 Yes and No

Earlier, I said that I would explain briefly, what

depositions are. Before I get into explaining the answer of yes and no, I would now like to do that.

Depositions are, in short, sworn testimony of a witness, taken before trial, held out of court with no judge present. The witness is placed under oath to tell the truth and asked questions by the party taking the deposition. Even at depositions intended purely for discovery purposes, that is, interviews taken to gain information and not necessarily to preserve testimony for trial, caution must be exercised. Any time your deposition is taken, a court reporter transcribes your testimony and files the deposition in court. You are bound by that testimony. Examining attorneys will often ask leading questions throughout the deposition. At trial, leading questions "control" the adverse witness, because answers are technically limited to yes or no. It is important that you know that the testimony you give is preserved for the record for the Judge's review and possibly for review by higher courts. It is important to have the record crisp and clear.

At discovery depositions however, leading questions and yes and no answers are very inefficient means for the examiner to obtain new and useful information. Nevertheless, if the examiner chooses to be inefficient, it is not your job or responsibility to teach him the error of his ways. You will be faced with strong temptations to answer "Yes, that's true and I can explain why that happened..." or "No, that's not quite accurate, because you are assuming that..." You have no obligation to explain anything unless you are asked to explain it. You have no duty to perfect the attorney's questions unless you are asked to state in what way it was inaccurate.

Do not attempt to impress the attorney by showing how much you know. It is important that the attorney be made to ask the right questions. If she never asks the right questions, then it is not your obligation to do it for her.

III The Communication Aspect of Testifying

So far, we have looked at a plan to answer most questions posed and some tips to help you in your demeanor while testifying. It takes more than this however, because testifying is nothing more than a form of communication. As most activists know, effective communication is based on having the necessary skills to communicate your message. Effective communication is based upon learned skills. Therefore, we can identify and then practice them to increase our personal effectiveness.

Your goal in testifying is to increase your credibility as a witness. It is the same principle applied to any type of public speech, lecture or call for support. The strongest enemy you will face in this goal is anxiety.

Call it nervousness, tension, pressure, self-consciousness or whatever, but the uncomfortable or tense witness is assured of having a minimal or an adverse impact on their case. On the other hand, the self-assured, effective communicator has an excellent chance of reaching the goal of maximizing her testimony and credibility.

What Really Counts in Effective Communication

The effectiveness or believability of your face-to-face communication, whether it is with one person or in a small group situation (such as a courtroom) consists of three factors. Each of them makes up a percentage of the credibility of that which you will testify to. These factors are:

Verbal - The words you choose, the content, the precise language you use in communicating your message.

Vocal - The qualities of your voice in delivering your message, i.e. projection, pitch and resonance.

Helpful Hint

Do not testify in narrative form, that is, by telling a story of the events. Try to make the opposing attorney ask the questions, rather than volunteering answers. Please keep in mind that these guidelines are intended to be followed when questioned by opposing attorneys (cross examination.) When you are testifying on direct examination (by your own attorney) you should answer the questions as completely as possible. However, always discuss your testimony with your attorney before testifying.

II Maximizing the Impact of Your Testimony

The following are general tips to be used when testifying in court or in a deposition.

1. Do not answer a question until you understand it. If the question is unclear, ask the attorney to repeat it or rephrase it in clearer language. The court reporter can also be asked to read back the question.
2. Think about each question before answering it. Do not supply information not requested by the question, even though you may think it is relevant. If the attorney does not ask you all you know about a particular question, do not volunteer information.
3. If you do not know the answer to a question, say, "I don't know." Do not feel that just because a question is asked that you are expected to know the answer to it.
4. Do not answer a question unless you have personal knowledge of the matter asked. Personal knowledge means that you either witnessed the event or you participated in the event. What someone else tells you about what happened is not personal knowledge. Give factual information in answer to a question only if you have first-hand knowledge of the facts.

response. If you have no memory on a certain point, say so. But, never guess!

15. Don't be afraid to admit that you had conferences with your attorney about the case or your testimony. Good lawyers hold several conferences with their clients. If the opposing attorney asks you "Did your lawyer tell you what to say?" You should answer truthfully and say that your lawyer told you to tell the truth.

16. Unless your attorney makes an objection, you need to assume that you are bound to answer a question, if you know the answer.

17. You will be required to give simple "yes" and "no" answers to proper questions, but you will always have an opportunity to explain your answer if need be. If the opposing lawyer cuts you off in the middle of an important explanation, your attorney can ask you to amplify your answer during his cross examination.

18. You must fight against showing any exasperation, boredom or fatigue, even though the questioning may be very extensive. You will (or should have) protection against unwarranted harassment from your attorney, if he is doing his job. If you are in a deposition, let your lawyer know that you need to take a break, or if you need to consult with him or her at any time, either prior to a specific question or at any other time you choose.

19. Usually, a final question will be asked as to whether you know of "anything else" that has not been brought-out during the case. You should not attempt to go any further in answering this question other than:

"I do not recall anything, but if you ask a specific question, I will try to answer it for you, if I can."

5. If asked, do not hide any facts that you are specifically asked, unless you are instructed not to answer a question. If you attempt to hide information, which you feel might be damaging to your case, and this information eventually comes out, it will be worse for your case than if you had been upfront and straightforward about it. It is sometimes best to confront matters that may not be good for your case, by bringing them up on direct examination rather than letting the prosecuting or opposing attorney bring them out on cross examination.

6. If an objection is made by your attorney, stop speaking. If you are instructed not to answer the question, do not answer it. You should always allow a slight pause before answering a question, to allow you to collect your thoughts and decide on your response. This gives your attorney a chance to object, if he needs to. If you jump in and answer the question before the attorney has finished asking it, you may give information that you do not need to give. Never anticipate or make an assumption about a question being asked.

7. Do not argue with opposing counsel. Remain calm and natural. Never become angry or hostile. Avoid asking questions in your answers unless you are asking for clarification. Do not engage in asking the attorney such a question as "Don't you think that would be a proper thing to do?" or "You would have done the same thing I did." This makes you appear to be hostile.

8. Do not try to memorize your answers. Give a factual, straightforward response to the questions. If need be, make notes.

9. Dress neatly according to dominant social standards. The jury may not be impressed by the 20-odd piercings, tattoos and what not. This could very well



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be the thing that determines how your testimony is perceived. After all, the jurors are picked from among the public. They may or may not have hang-ups, prejudices, etc.

10. Exercise courtesy and good manners.

11. The opposing attorney will be evaluating you constantly in a deposition. From the very moment you appeal, you will be under observation. You must therefore, take great care in your appearance, manner and remarks at all times. Everything you say will be put down by the court reporter. In court, everything you say will be taken down on tape and later transcribed. In a deposition, the attorney will attempt to set you up to determine what type of witness you will be for his side.

12. Do not look for traps in every question. There are not many trick questions and if one comes along your attorney will help you out by objecting or other means. In trying to second guess each question, you will create the appearance of calculation, hesitation, apprehension, untruthfulness or possibly, simple stupidity.

13. Be polite. It is likely that you will be insulted or browbeaten. So when this happens, resist the urge to meet it with similar tactics. That is very hard! Even if the lawyer for the other side is acting like a lunatic, it will help your case to remain calm and maintain an attitude of courtesy. If you get on his level, it will become a shouting match between the two of you. If you, however, remain calm and collected, retain your composure and not fall for this trap, the attorney will look stupid and be intimidated.

14. The law requires that you testify according to your best memory. If you are uncertain about the answer to a question, indicate this uncertainty in your